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November 20, 1993

Office of the Secretary
Federal Communication Commission
1919 M Street N.W.
Washington, D.C.

Re: PP Docket No. 93-253
Section 309(j) Rule Making

In the Matter of)
Implementation of Section 309(j)) PP Docket No: 93-253
of the Communication Act)
Competitive Bidding)

COMMENTS

I am submitting comments to the proposed auction rules as a small business person. My comments are as follows:

Auction Design

The single most important element in auction design should be simplicity. Complicated auction rules will only feed suspicion on the part of the public that the rules have been rigged to benefit one interest group or another. The simplest procedure is therefore the best.

Oral bidding, as noted in paragraph 37 ("#37"), is likely to be perceived as fair because the process is open, and any eligible qualified bidder who is willing to pay enough can be assured of winning.

Electronic bidding (#39), while perhaps appropriate for auctioning Treasury securities to major financial institutions who submit multiple bids on a weekly basis, places a great burden on small businesses who may not have access to the infrastructure required for electronic bidding, and who only wish to bid on a handful of markets in one auction session dealing with markets in the state in which they do business. It is not an "open" process.

Sealed bidding for licenses as part of a group and oral bids for the component parts (#47 $ #48) denies the small business bidder the opportunity to pay enough for the market that he wants to build and operate. If a major player wants to buy all the markets comprising a market cluster, that player should have to compete on a market by market basis for each component of the cluster. That assures that each market will go to the party that values it the most, and maximizes the return to the treasury.

Small business owners of small markets provide services to the public sooner than do major players who own both the large markets and the surrounding small ones. The large market gets built first, because it is more profitable. Small, low population density markets get built only after the large, high population density market is built out. In effect, small markets are warehoused by big players until they get around to building them.

A combination of initial payment plus royalties (#70) would be an ideal formula because payment of, say, a 5% of gross revenue royalty would precisely match payment to market revenues. There is a strong public policy appeal for the treasury to receive an ongoing revenue stream from the operation of spectrum that is a national asset.

Most operators hold each market license in a separate subsidiary, and auditing is simply a matter of looking at the appropriate tax return to determine gross customer revenue. The complexity lies not in administration but in the bidding.

A royalty approach is appropriate only if all the bidders for a particular license were "royalty" bidders. Then the bidding competition would be the amount of the initial payment. If the final rules provide for specific spectrum set asides for qualified applicants, then royalties would provide maximum opportunity for qualified entities by reducing the cost of entry and the best deal possible for the treasury.

Specific Services

The determination that IVDS should be subject to auction rules needs to be reconsidered (#143). Since IVDS was authorized, the industry has begun to move in a different direction from that originally contemplated. The business plans of a number of IVDS service providers contemplate "free" access to the IVDS system for any customer who owns an appropriate box. There would be no charge to the customer for connection to the system or for system time used.

The cost would be paid by the vendors of goods and services offered to customers via IVDS. In this respect, IVDS looks much more like broadcast television, which is paid for by the vendors of goods and services, than like, for example, cellular telephone service, where the customer pays for connection time.

Because no IVDS systems are yet in service, the degree to which this trend in the IVDS industry becomes the primary operational reality is as yet unknown. If, in fact, IVDS is offered as a no connection charge and no time charge service, then the Commission is mandated under the rules established by Congress to award IVDS spectrum by lottery and not by auction. This commentator requests reply comments from prospective IVDS service providers on their proposed operational plans, so that the Commission can have the facts available upon which to base a conclusion on the primary use of the IVDS spectrum.

IVDS preferences (#144), where there are only two licenses per market, are more difficult than PCS where there are multiple licenses per market. The applications filed for the first nine markets, at $1,400 per application, indicate that there is strong interest from small business applicants. With a relatively low entry cost compared to PCS, IVDS is a natural for small business.

In view of the foregoing, in the event that IVDS is awarded by auction, the Commission should set aside one of the two available licenses in each market for qualified entity applicants, and such applicants should, at a minimum, be permitted the installment method of payment.

If the Commission really wants to encourage qualified entity participation in IVDS, it should adopt the down payment plus 5% royalty method of payment. All bidding for one license in each market would be for the amount of the down payment. This approach gives maximum opportunity for qualified entities to participate in IVDS.

Yours truly,

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Small business person